Supreme Court, U.S.
FILED
AUG 15 1997
CLERK

No. 97-106

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY THOMAS and IVY THOMAS,
Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Natalie O. Ludaway
Counsel of Record
LEFTWICH & DOUGLAS, P.L.L.C.
1401 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005
(202) 434-9100
Attorney for Respondent Donna Powell-Thomas

30 pp

QUESTIONS PRESENTED

1. Whether the District Court properly applied the "strict compliance" standard under 5 U.S.C. Section 8705(a) where the insured, who on two separate occasions previously completed and signed his name on the beneficiary designation forms in the box marked "Signature of Insured," naming Respondent Donna Powell-Thomas as the beneficiary, subsequently prepared a third beneficiary designation form naming Petitioners as the beneficiaries and did not sign the box marked "Signature of Insured."

2. Is there a compelling reason for this Court to grant the petition for writ of certiorari, where the Petitioners failed to prove by a preponderance of the evidence that the insured signed the contested form?

3. Should this Court grant the petition for writ of certiorari to allow Petitioners to demonstrate that the insured intended to sign the contested designation of beneficiary form when they failed to conduct discovery and develop the record below.

PARTIES TO THE PROCEEDING

Petitioners, Mary Thomas and Ivy Thomas a/k/a Ivy Dotson were the Plaintiffs in the United States District Court and Appellants in the United States Court of Appeals. Respondent Metropolitan Life Insurance Company was a Defendant in the District Court and Appellee in the Court of Appeals. Respondent Donna Powell-Thomas was a Plaintiff/Intervenor in the District Court and Appellee in the Court of Appeals. Stewart Funeral Home, Inc. was joined as a Plaintiff in the District Court. Stewart Funeral Home, Inc., has not actively participated in the proceedings.

TABLE OF CONTENTS

Questions Presented i

Parties to the Proceeding ii

Table of Authorities v

Opinions Below 2

Jurisdictional Statement 2

Legal Provisions 2

Counter-Statement of Case 3

Reasons for Denying the Writ 6

I. The Federal Employees Group Life Insurance Act, 5 U.S.C. § 8705(a), Requires Strict Compliance with its Provisions 6

II. The Designation of Beneficiary Form of October 13, 1993, is Invalid as Decedent Failed to Sign the Document 8

III. The Decision below does not Conflict with the Decision of the United States District Court for the Middle District of Florida 10

Conclusion 12

TABLE OF AUTHORITIES

Adams v. Macy,
314 F. Supp. 399 (D.Md. 1970) 6

Burleson v. Burleson,
277 A.2d 647 (D.C. 1971) 6

Celotex Corp. v. Catrett,
477 U.S. 317 (1986) 10, 11

Fair v. Moore,
397 A.2d 976 (D.C. 1979) 8

Guidry v. Sheet Metal Workers
National Pension Fund,
493 U.S. 365 (1990) 8

Huff v. Metropolitan Life Ins. Co.,
675 F.2d 119 (6th Cir. 1982) 7

In re Estate of Hall,
328 F. Supp. 1305 (D.D.C. 1971) 9, 10

Matsushita Elec. Industrial Co. v.
Zenith Radio,
475 U.S. 574 (1986) 11

Metropolitan Life Ins. Co. v. Christ,
979 F.2d 575 (7th Cir. 1992) 7, 8

Metropolitan Life Ins. Co. v. Manning,
568 F.2d 922 (2d Cir. 1977) 7

Metropolitan Life Ins. Co. v. Trainor,
754 P.2d 427 (Colo. Ct App. 1988) 6, 7, 8

O'Neal v. Gonzalez,
839 F.2d 1437 (11th Cir. 1988) 7

People v. Stephens,
297 N.E. 2d 224 (Ill. App. 1973) 9

Plemens v. Diddle-Glaser, Inc.,
224 A.2d 464 (Md. 1966) 9

Sears v. Austin,
292 F.2d 690 (9th Cir. 1961) 6, 7

State v. Schell,
224 N.E.2d 49 (Ind. 1967) 11

United States v. Wexler,
657 F. Supp. 966 (E.D. Pa. 1987) 9

Ward v. Stratton,
988 F.2d 65 (8th Cir. 1993) 6

STATUTES AND REGULATIONS

5 U.S.C. Section 8705(a) (1994) ..... *passim*

28 U.S.C. Section 1291 (1994) 5

28 U.S.C. Section 1335 (1994) 4

28 U.S.C. Section 1254(1) (1994) 2

Fed. R. Civ. Proc. 56(e) 13

Fed. R. Civ. Proc. 67 4

LEGISLATIVE MATERIAL

H.R. 2579, 83d Cong., 2d Sess. (1954),
reprinted in 1954 U.S.C.C.A.N. 3052 6

S. Rep. No. 1064, 89th Cong., 2d Sess. (1966),
reprinted in 2 U.S.C.C.A.N. 2070 6

No. 97-106

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

MARY THOMAS and IVY THOMAS,
Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent, Donna Powell-Thomas respectfully requests that Petitioners' request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia entered on February 24, 1997, be DENIED.

OPINIONS BELOW

The Order of the District Court is reported at 921 F. Supp. 810 (D.C. 1996). The Judgment of the Court of Appeals is reported at 111 F.3d 963 (D.C. Cir. 1997). The Court of Appeals' Orders denying the Petition for Rehearing and Suggestion for Rehearing en Banc are not reported. However, complete copies have been included in Appendix A through Appendix B of the Petition for Writ of Certiorari.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on February 24, 1997. A Petition for Rehearing and a Suggestion en Banc, was filed on March 25, 1997, and denied on June 11, 1997. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1) (1994).

LEGAL PROVISIONS INVOLVED IN THIS CASE

Federal Employee's Group Life Insurance Act ("FEGLIA"), 5 U.S.C. Section 8705(a) (1994).

COUNTER-STATEMENT OF CASE

Decedent Gerald C. Thomas, Jr. was employed by the District of Columbia Lottery and Charitable Games Control Board ("Board") at the time of his death on February 2, 1994. Employees of the Board, including Decedent, were entitled to participate in the Federal Employees Group Life Insurance ("FEGLI") program, which was managed by Metropolitan Life Insurance Company ("MetLife"). Decedent's policy benefits amounted to One Hundred Ninety-Seven Thousand Dollars ($197,000.00).

On August 21, 1989, and April 7, 1993, Decedent completed two (2) Designation of Beneficiary forms naming Respondent Donna Powell-Thomas as the sole beneficiary of 100% of his death benefits. Both Designation of Beneficiary forms were fully completed and properly executed by Decedent with Decedent signing his name in cursive in the box on the forms -- Signature of Insured, witnessed, and received in the appropriate office prior to Decedent's death. Despite the fact that Respondent had initiated divorce proceedings, Respondent was Decedent's wife at the time of his death.

On October 13, 1993, Decedent purportedly filled out a third Designation of Beneficiary form in which Petitioners Mary and Ivy Thomas were listed as the beneficiaries of his FEGLI policy proceeds. The form contains Decedent's name and address. It is undisputed that the Decedent did not sign the Designation of Beneficiary form in the space marked "Signature of Insured" as required -- this area was left blank. The only markings on the form which appear to be signatures are those contained under the spaces marked "Signature of Witness[es]". There is no evidence in the record by the individuals who allegedly signed as witnesses that they

observed Decedent "sign" the form. In several places, the form instructs the policy holder that it must be signed. Specifically, the instructions on the back of the form state that "[a]ll entries on the form ***except signatures*** should be typed or printed in ink (typewriting preferred)." (Emphasis added).

After Decedent's death, Petitioners and Respondent Powell-Thomas filed claims for the insurance proceeds. Thereafter, on August 31, 1994, Petitioners filed a Complaint in the United States District Court for the District of Columbia to collect the insurance proceeds pursuant to the purported Designation of Beneficiary dated October 13, 1993. Respondent Donna Powell-Thomas subsequently moved to and was granted leave to intervene in the suit. Respondent Powell-Thomas filed a Motion for Declaratory Judgment on December 19, 1994, based on Decedent's properly executed Designation of Beneficiary form dated April 7, 1993.

Pursuant to 28 U.S.C. Section 1335 and Rule 67 of the Federal Rules of Civil Procedure, Respondent MetLife deposited the policy proceeds into the Registry of the District Court. Upon the Motion of MetLife, Stewart Funeral Home was added as a party Plaintiff, but has not otherwise participated in this case.

After fully considering all positions, the District Court entered an Order on January 2, 1996, denying Petitioners' Motion for Summary Judgment and Request for Hearing, and granting Respondent Powell-Thomas' Motion for Declaratory Judgment (treated by the Court as a Motion for Summary Judgment). In its opinion, the District Court, relying on prior case law requiring "strict compliance" with FEGLIA, ruled that "the decedent's acts of printing his name and checking

the box indicating that he had signed the form are insufficient to constitute a signature as contemplated by the statute." (A. 8a)

The Petitioners, relying upon 28 U.S.C. Section 1291, appealed to the United States Court of Appeals for the District of Columbia Circuit on January 29, 1996. The Court of Appeals affirmed the District Court's grant of Summary Judgment to Respondent Donna Powell-Thomas. In its judgment, the Court of Appeals stated that "[g]iven that the insured signed his name by writing it in cursive on three of four designation of beneficiary forms in evidence . . . the evidence as a whole does not support concluding that Thomas intended his name . . . to constitute his signature." (A. 1a) Accordingly, the panel determined an opinion was not needed, and entered its per curiam order on February 24, 1997.

On March 25, 1997, Petitioners submitted a Petition for Rehearing and Suggestion for Rehearing en Banc to the United States Court of Appeals. After full consideration, the United States Court of Appeals for the District of Columbia Circuit denied both the Petition for Rehearing and Suggestion for Rehearing En Banc. In its judgment, the Court stated in pertinent part that:

> "[T]his court affirmed the judgment of the district court because the evidence proffered in the summary judgment pleadings failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured in this case intended to sign the contested form merely by printing his name in the informational entries. Appellant would have the burden at trial of establishing that fact."

(A. 3a) Accordingly, the panel determined that "there [were] no genuinely disputed issues of material fact," and entered its per curiam judgment on June 11, 1997.

I. REASONS FOR DENYING THE PETITION THE FEDERAL EMPLOYEES GROUP LIFE INSURANCE ACT, 5 U.S.C. § 8705(a), REQUIRES STRICT COMPLIANCE WITH ITS PROVISIONS.

The trial court found that the form at issue dated October 13, 1993 had not been signed by Decedent. The lower court followed the law that FEGLIA requires "strict compliance" with its provisions. See Ward v. Stratton, 988 F.2d 65, 67 (8th Cir. 1993); Adams v. Macy, 314 F.Supp. 399, 401 (D.Md. 1970); Metropolitan Life Ins. Co. v. Trainor, 754 P.2d 427, 428 (Colo. Ct. App. 1988); Burleson v. Burleson, 277 A.2d 647, 648 (D.C. 1971). In summary, the Petition for writ of certiorari should be denied because Petitioners submitted no evidence that the Decedent signed or even intended to sign the October 13, 1993, form when he printed his name in the informational entries.

In an effort "to provide low cost group life insurance to Federal employees," Congress established the Federal Employee's Group Life Insurance Act ("FEGLIA") in 1954. H.R. 2579, 83d Cong., 2d Sess. (1954), reprinted in 1954 U.S.C.C.A.N. 3052. According to the statute, FEGLI proceeds are to be paid: "First, to the beneficiary or beneficiaries designated by the employee in a ***signed and witnessed*** writing received before death in the employing office." 5 U.S.C. § 8705(a). (Emphasis added.) In 1966, Congress amended FEGLIA to include language that "a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or

effect." Id. This language was added after the ninth circuit court held that a beneficiary designated in a will which had not been executed or filed in accordance with FEGLIA was valid. See S. Rep. No. 1064, 89th Cong., 2d Sess. (1966), reprinted in 2 U.S.C.C.A.N. 2070, 2071; see Sears v. Austin, 292 F.2d 690 (9th Cir. 1961), cert. denied, 368 U.S. 929 (1961). Congress amended FEGLIA to make clear that the statute is to be strictly construed and that "the order of precedence . . . shall prevail over any extraneous document designating a beneficiary." Id.; O'Neal v. Gonzalez, 839 F.2d 1437, 1440 (11th Cir. 1988). Hence, the case at bar turns on whether, vel non, Decedent signed the October 13, 1993 Form in accordance with FEGLIA.

Congress has forcefully and clearly identified to whom and how FEGLI benefits are to be paid. For reasons of administrative convenience, Congress established an inflexible rule that a beneficiary must be named strictly in accordance with the statute, irrespective of the equities in the case; Metropolitan Life Ins. Co. v. Manning, 568 F.2d 922, 926 (2d Cir. 1977). Congress created no exceptions to its statutory scheme, and "courts should be loath to announce equitable exceptions to legislative requirements or prohibitions that are unqualified by the statutory text." Guidry v. Sheet Metal Workers National Pension Fund, 493 U.S. 365, 376 (1990), remanded, 10 F.3d 700 (10th Cir. 1993). Congress' general intent in enacting FEGLIA was to avoid administrative difficulties for the government and insurance companies, and more importantly, to avoid delay in paying benefits to the survivors. Id. S. Rep. No. 1064 at 2071; Metropolitan Life Ins. Co. v. Christ, 979 F.2d 575, 578-79 (7th Cir. 1992) (Congress has reacted promptly to foreclose any T equities in the statute interpreted by federal courts in order to further federal interests of administrative

convenience and avoidance of delay in payment of proceeds that results from litigation).

It is clear that Congress has chosen to favor administrative efficiency over equitable considerations. FEGLIA's order of payment preference sets forth an inflexible, mandatory procedure which must be strictly adhered. See Metropolitan Life Ins. Co. v. Christ, 979 F.2d 575 (7th Cir. 1992) (FEGLIA establishes procedure to be followed regardless of other documents or the equities of the case); Huff v. Metropolitan Life Ins. Co., 675 F.2d 119 (6th Cir. 1982) (compliance with FEGLIA policy, not intent of insured, is controlling); Metropolitan Life Ins. Co. v. Trainor, 754 P.2d 427, 428 (Colo. Ct. App. 1988) (Congress has indicated its clear intention to make strict compliance with the statutory provisions mandatory). Courts should not second-guess or seek to modify that intent.

Even Appellants concede that the Beneficiary Designation Form is to be governed by the "strict compliance" standard. Moreover, unlike in Fair v. Moore, 397 A.2d 976 (D.C. 1979), which dealt with whether the insured's personnel office qualified as an "employing office" within the meaning of 5 U.S.C. § 8705(a), here, Decedent failed to properly execute the Form as he did not place his signature on the document. Consequently, the October 13 Form is defective and cannot be validated through alleged "internal integrity and consistency" or any other means.

II. THE DESIGNATION OF BENEFICIARY FORM OF OCTOBER 13, 1993, IS INVALID AS DECEDENT FAILED TO SIGN THE DOCUMENT

The sole point of contention is whether Decedent

"signed" the beneficiary form in accordance with the FEGLIA requirements. Decedent made no mark in the box on the Form where he should have signed. It is undisputed that on two previous occasions Decedent had properly completed a designation of beneficiary form and signed his name in cursive in the signature box on the form. Regardless of Petitioners' claims, Petitioners failed to demonstrate the existence of sufficient evidence that Decedent's act of printing his name in the informational entries of the Form constituted a signature. Petitioners are seemingly arguing that the court below failed to recognize that something other than a cursive, hand-written name can act as a signature. Petitioners miss the point. Petitioners cannot establish that Decedent did the act of signing the Form. They failed to submit any evidence that Decedent placed a symbol in the box labeled "Signature of Insured" which could be construed as a signature. See United States v. Wexler, 657 F. Supp. 966, 971 (E.D. Pa. 1987), where "the documents in question were under seal, had stamped signatures, and bore ink initials."

Had Decedent made a marking in the space rather than leaving it blank, perhaps Petitioners' argument have some credence. Decedent did nothing more than identify himself by name, social security number, date of birth, and address, as the insured employee. As the court In re Estate of Hall, 328 F.Supp. at 1309, stated, "a signature must indicate something more than the mere act of identifying the maker of the document in question." Petitioners' argument that strict compliance with the requirement that Decedent have signed the Form in the signature box is unnecessary because FEGLIA does not require that a particular form be used is without merit. The fact is that Decedent used a standard form which clearly indicated the proper place to affix his signature." In a matter such as this where strict compliance is mandated, Petitioners cannot seek a "careful application" of the statute's terms when it suits their position. Decedent failed to place his signature on the Designation of Beneficiary form dated October 13, 1996. As such, that Form has "no force or effect." 5 U.S.C. § 8705(a). In order to refrain from

directly contravening the FEGLIA statute as written and as interpreted, Respondent Powell-Thomas must be acknowledged as the sole beneficiary of Decedent's insurance proceeds.

III. THE DECISION BELOW DOES NOT CONFLICT WITH THE DECISION OF THE UNITED STATES COURT FOR THE MIDDLE DISTRICT OF FLORIDA

The decision by the United States District Court for the District of Columbia does not conflict with the decision the United States District Court for the Middle District of Florida. The Florida Court, as well as the District of Columbia Court applied the requisite standard for issuing summary judgment. The evidence in the case at bar, unlike the Florida case, failed to demonstrate the existence of sufficient evidence necessary to demonstrate any genuine issue as to material facts. Accordingly, the District Court granted Respondent Powell-Thomas' Motion for Declaratory Judgment.

The entry of summary judgment is appropriate when:

> pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. Proc. 56(c). This Court has stated that the moving party always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). This Court has also explained that summary judgment is appropriate, no matter

which party is the moving party, where a party fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. See Id. at 322. Once the moving party has carried its burden, the responsibility then shifts to the nonmoving party to show that there exists a genuine issue of material fact. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Industrial Co. v. Zenith Radio, 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986) (citations omitted)

If a person "intended the mark or the name, printed or written, when it is imprinted upon the document, to be his signature and he so adopts it as his act and intends to be bound thereby, it meets the requirements of the law" and constitutes a signature. See State v. Schell, 224 N.E.2d 49, 53 (Ind. 1967). There is no evidence in the record that Decedent adopted some other signature or intended the October 13, 1993 form to be effective. Indeed, in support of this Motion for Summary Judgment Petitioners offered affidavits from two employees at the D.C. Lottery and Charitable Games Control Board: Carolyn V. Osbourne and Deborah L. Roberson. Ms. Osbourne and Ms. Roberson only stated in their affidavits that Decedent, "in their presence...completed, in his own hand, a Designation of Beneficiary form. He completed in his own hand the entire top portion of the form above, "Witness to Signature".... Petitioners' only had generalized evidence that Decedent completed the October 13, 1993 Form. This was insufficient to show that Decedent intended to sign the Form. It did not contradict the more specific evidence of the Decedent's signing two prior forms. The District Court therefore properly determined that there was no genuine issue as to the fact that the October 13, 1993 form was not signed.

In order to withstand a summary judgment motion once the moving party has made a prima facie case to support its claims, the nonmoving party must come forward with

specific facts showing that there is a genuine issue for trial. Fed. R. Civ. Proc. 56(e). For this reason and because Petitioners failed to come forward with such facts, relying instead on bare assumptions and arguments, the District Court made its decision and the Court of Appeals affirmed that decision.

Of note, Petitioners Mary and Ivy Thomas suggest that their due process rights were violated because "due process necessitates that they have an opportunity to demonstrate the decedent's purpose and intent in preparing the [contested] document." This argument is, at best, specious. Petitioners had ample time between August 31, 1994, when the Complaint was filed, until January 22, 1996, when the district court issued its opinion, to use numerous discovery methods to develop their case and demonstrate the decedent's purpose and intent. Petitioners chose not to conduct any discovery. Furthermore, Petitioners suggestion that the Court of Appeals decision to affirm the District Court decision without a hearing or oral argument is also flawed. A Court's decision whether or not to afford a hearing or oral argument is discretionary.

CONCLUSION

The United States District Court for the District of Columbia, as well as, the United States Court of Appeals for the District of Columbia Circuit correctly decided that as a matter of law Respondent Donna Powell-Thomas is the sole beneficiary to the FEGLI policy of the Decedent. The courts correctly applied the traditional summary judgment standard and analysis in complete conformity with the law.

The United States District Court decided in favor of Respondent Donna Powell-Thomas, based on the record. The United States Court of Appeals for the District of Columbia Circuit affirmed the District Court's decision, ruling that "the evidence as a whole does not support concluding that [Decedent] intended his name as printed . . . on the

contested form to constitute his signature." The Court of Appeals denied the Petitioners' Motion for Rehearing and Suggestion for Rehearing en Banc. In denying the motion, the Court stated that:

> "[petitioners] have failed to demonstrate that rehearing is warranted. This court affirmed the judgment of the district court because the evidence proffered . . . failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured . . . intended to sign the contested form . . . ."

(A. 1a)

The rulings in this matter do not conflict with any decisions of this Court or any other court. The decisions are correct in light of applicable legal principles and FEGLIA case authority. Petitioners only seek another chance to reargue their case before this Court. Therefore, Respondent Powell-Thomas requests that the petition be denied.

Respectfully submitted,

Natalie O. Ludaway,
Counsel of Record
LEFTWICH & DOUGLAS, P.L.L.C.
1401 New York Avenue, N.W.
Suite 600
Washington, D.C. 20005
(202) 434-9100
Attorney for Respondent
Donna Powell-Thomas

Date: August 15, 1997.